

DENNIS J. HERRERA, State Bar #139669  
City Attorney  
ELIZABETH SALVESON, State Bar #83788  
Chief Labor Team  
MARGARET W. BAUMGARTNER, State Bar #151762  
ADELMISE WARNER, State Bar #215385  
Deputy City Attorneys  
Fox Plaza  
1390 Market Street, Floor No. 5  
San Francisco, California 94102-5408  
Telephone: (415) 554-3930  
Facsimile: (415) 554-4248

Attorneys For Defendants  
CITY AND COUNTY OF SAN FRANCISCO ET AL.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CLIFFORD COOK,

Plaintiff,

vs.

CITY AND COUNTY OF SAN  
FRANCISCO, ANTONIO FLORES,  
DON SLOAN, MARSHA ASHE, and  
DOES 1-50, inclusive,

Defendants.

Case No. C 07 2569 CRB

**DEFENDANTS' NOTICE OF MOTION  
AND MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

Date: Feb. 22, 2008

Time: 10:00 a.m.

Place: Ctrm. 8, 19<sup>th</sup> Fl.

Date action filed:

Trial date: None set

1 TO PLAINTIFF AND HIS ATTORNEY OF RECORD:

2 PLEASE TAKE NOTICE THAT pursuant to the Court's order of October 26, 2007  
 3 requesting that the City and County of San Francisco and the individual defendants (herein after  
 4 collectively "the City") file a motion for partial summary judgment on plaintiff's Equal Protection  
 5 claim and on Qualified Immunity, the City will and hereby does move for partial summary  
 6 judgment. The hearing shall take place pursuant to court order on February 22, 2008, at 10:00 a.m.,  
 7 at the United States District Court for the Northern District of California, 450 Golden Gate Ave.,  
 8 San Francisco, California, Courtroom 8, on the 19<sup>th</sup> Floor.

9 The grounds for the City's motion is as follows:

- 10 1. The court should grant summary judgment to the City on plaintiff's 2<sup>nd</sup> Cause of Action under  
 11 42 U.S.C. § 1983 based on Equal Protection because plaintiff cannot present admissible  
 12 evidence upon which a reasonable trier of fact could conclude that the City arrested him because  
 13 of his race or the race of his wife.
- 14 2. The court should grant summary judgment to the City on plaintiff's 2<sup>nd</sup> Cause of Action under  
 15 42 U.S.C. Section 1983 in its entirety based on Due Process because the court previously  
 16 granted the City's motion to dismiss the claim based on that ground, without leave to amend.
- 17 3. The court should dismiss the individual defendants in their entirety because (1) the individual  
 18 defendants' involvement with plaintiff was related only to the criminal investigation and arrest  
 19 and (2) the individual defendants have qualified immunity for those actions.
- 20 4. The court should grant summary judgment to the City on plaintiff's 2<sup>nd</sup> Cause of Action under  
 21 42 U.S.C. § 1983 (*Monell*) because plaintiff cannot present an admissible evidence on which a

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1 reasonable trier of fact could conclude that the City has a policy or practice of racially  
2 discriminatory arrests or that a final policy maker ratified any alleged unconstitutional action

3 Dated: January 18, 2008

DENNIS J. HERRERA

4 City Attorney  
5 ELIZABETH SALVESON  
6 Chief Labor Attorney  
7 MARGARET W. BAUMGARTNER  
8 Deputy City Attorney

9 By: /s/ Margaret W. Baumgartner  
10 MARGARET W. BAUMGARTNER  
11 Attorneys for Defendants CITY AND  
12 COUNTY OF SAN FRANCISCO et al.  
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